IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/02/2004

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.4475 of 2001

J.Rajan Babu .. Petitioner

-Vs-

1. The District Collector
Pudukottai.

2. The Additional Commissioner
Central Excise
Madurai. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issue of a writ of Certiorari as stated therein.

For Petitioner : Mr.M.Sureshkumar

For Respondents : Mr.P.Gunaraj, Spl.G.P.
for 1st respondent
Mrs.Vanathi Srinivasan
A.C.G.S.C. for 2nd respondent

:ORDER

By proceedings dated 27.7.2000, the first respondent clarified that the community certificate dated 10.2.1986, certifying that the petitioner belongs to Kattunayakkan community, a schedule tribe, was bogus and not genuine. Aggrieved by the same, the petitioner has preferred this writ petition for issue of a writ of Certiorari to call for the records relating to the proceedings of the first respondent in Na. Ka.R1/19489, dated 27.7.2000 and to quash the same.

2.1. According to the petitioner, he obtained a community certificate on 10.2.1986, which is said to have been issued by one S.Ayyasamy, under the seal of the Tahsildar-Taluk Executive Magistrate, Pudukottai, and on the strength of the said community certificate, the petitioner joined in the service of the second respondent/department in a vacancy reserved for the schedule tribes with effect from 1.9.1989.

2.2. Even though the petitioner submits that, at the time of joining

duty on 1.9.1989, he had submitted his original community certificate to the second respondent/department, the second respondent/ department, in their detailed counter affidavit dated 30.9.2001, denied the same and also stated that they have called for an explanation on 25.5.1999 from the Administrative Officer concerned for lack of proper verification of the community certificate of the petitioner at the time of joining duty, viz., 1.9.1989.

2.3. According to the second respondent/ department, as per the explanation submitted by the Administrative Officer on 2.6.1999, the petitioner submitted only an attested copy of the community certificate dated 10.2.1986 at the time of joining duty and when he was insisted to produce the original community certificate, the petitioner promised to submit the same in due course. In the meanwhile, as complaints were received that the petitioner belongs to Gavara Naidu community, a backward caste, the second

respondent/department, in their letter dated 21.4.1998, sought for verification of the attested copy of the community certificate dated 10.2.1986 relied upon by the petitioner, from the first respondent.

2.4. On receipt of the said requisition from the second respondent/ department dated 21.4.1998, the first respondent forwarded the same to the Revenue Divisional Officer, Pudukottai for a detailed report. The Revenue Divisional Officer, Pudukottai, after a detailed enquiry, by report dated 23.4.2000, held that:

i) persons belonging to Kattunayakkan community are not living in Karugapoolampatti, Tirumayam Taluk, Pudukottai District; ii) on 10.2.1986, S.Ayyasamy, who is said to have issued the community certificate to the petitioner under the seal of Tahsildar-Taluk Executive Magistrate, Pudukottai is bogus and invalid, as the said S. Ayyasamy was not working as Tahsildar-Taluk Executive Magistrate, Pudukottai on the said date, viz., 10.2.1986, and on the other hand, one K.Subramaniam was working as Tahsildar-Taluk Executive Magistrate, Pudukottai from 10.10.1984 to 2.3.1987.

2.5. Pursuant to the said report of the Revenue Divisional Officer, Pudukottai, dated 23.4.2000, the first respondent, in his proceedings dated 27.7.2000 addressed to the second respondent/department, clarified that the community certificate dated 10.2.1986, certifying that the petitioner belongs to Kattunayakan community, a schedule tribe, was bogus and not genuine.

2.6. Based on the proceedings of the first respondent dated 27.7.200 0, the second respondent/department initiated disciplinary action against the petitioner by appointing the Assistant Commissioner as an Enquiry Officer, proposing to hold an enquiry on 20.2.2001. Hence, the present writ petition.

3. Mr.M.Suresh Kumar, learned counsel for the petitioner challenges the proceedings of the first respondent dated 27.7.2000 on the following grounds:i. after the constitution of the District Level Vigilance Committee, assuming there is a doubt as to the community of the petitioner, only the District Level Vigilance Committee could verify the community of the

petitioner, and therefore, the impugned proceedings dated 27.7.2000 of the first respondent is without jurisdiction;

ii. the second respondent is not entitled to initiate any disciplinary action against the petitioner on the basis of the proceedings dated 27.7.2000, inasmuch as the same was not served on the petitioner and suffers for want of jurisdiction; and

iii. the proceedings of the first respondent dated 27.7.2000 is liable to be quashed as the same is based on the report of the Revenue Divisional Officer dated 23.4.2000 based on an enquiry conducted without giving any opportunity to the petitioner.

4.1. In reply, Mr.P.Gunaraj, learned Special Government Pleader, placing reliance on the detailed counter affidavit filed on behalf of the first respondent submits that in the proceedings dated 27.7.2000, the first respondent had only clarified that the community certificate dated 10.2.1986 relied upon by the petitioner is bogus and invalid. The finding of the first respondent is based on the report of the Revenue Divisional Officer dated 23.4.2000, with reference to the authority of one S.Ayyasamy, who is said have issued the said community certificate to the petitioner. As per the said report dated 23.4.2003, S.Ayyasamy was only functioning as Tahsildar Kalalal (Excise)( Incharge) on 10.2.1986 and on the other hand, one K.Subramaniam was functioning as Tahsildar-Taluk Executive Magistrate, Pudukottai on 10.2.1986 .

4.2. Even though a clarification was made on behalf of the petitioner in this regard that the said S.Ayyasamy was working as Tahsildar Kalalal (Excise)(Incharge) on 10.2.1986, it was argued by the learned Special Government Pleader that the said S.Ayyasamy was not functioning as Tahsildar-Taluk Executive Magistrate, Pudukottai and therefore, the said certificate dated 10.2.1986, relied upon by the petitioner is not true and valid. In this regard, the learned Special Government Pleader also invited my attention to G.O.M.S.No.1888, Revenue Department, dated 10.11.1983 wherein the Government has directed that only the revenue officers not below the rank of Tahsildar are alone competent to issue community certificate to the scheduled castes and scheduled tribes. According to the learned Special Government Pleader, as per the records available at the Collectorate, the said S.Ayyasamy was not working as a Tahsildar-Taluk Executive Magistrate, Pudukottai Taluk on 10.2.1986, as he was working only as a Tahsildar Kalalal ( Excise) (incharge) at Pudukottai, whereas one K.Subramanian was working as Tahsildar-Taluk Executive Magistrate, Pudukottai Taluk on 10.2.19 86 and therefore, it is a matter of record that the community certificate dated 10.2.1986 relied upon by the petitioner is bogus and invalid, inasmuch as, the Tahsildar Kalalal (Excise) (Incharge) is deputed to the department of Prohibition and Excise to discharge the functions for granting license under the Prohibition and Excise Laws and to regulate the business, and are ceased to discharge the duties of Tahsildar-Taluk Executive Magistrate, Pudukottai Taluk.

5.1. Mrs.Vanathi Srinivasan, learned Additional Central Government Standing Counsel appearing for the second respondent/department, based on the counter affidavit filed by the second respondent, submits that the petitioner

never submitted the original documents to the office of the second respondent on the date of entry in service, viz., on 1.9.1989 and since, in the meanwhile, complaints were received that he belongs to Gavara Naidu community and not Kattunayakkan community, verification was sought for from the firs t respondent as to the genuineness of the attested copy of the community certificate dated 10.2.1986, and the first respondent in his proceedings dated 27.7.2000 clarified, of course based on the report of the Revenue Divisional Officer, that the community certificate relied upon by the petitioner is not true and valid, as the person who is said to have issued the certificate was not functioning as Tahsildar-Taluk Executive Magistrate, Pudukottai Taluk on 10.2.1986, whereas he was working only as Tahsildar-Kalalal (Excise) (Incharge), Pudukottai Taluk, and therefore, there is no illegality in initiating disciplinary action against the petitioner.

5.2. Assuming the petitioner was not aware of the fact that the community certificate was issued by Tahsildar-Kalalal (Excise) (Incharge) and that the petitioner could not be made to suffer on that account, it was argued by Mrs.Vanathi Srinivsan, learned Additional Central Government Standing Counsel for the second respondent that there is no valid reason for the petitioner to approach the Tahsildar Taluk Office, Pudukottai for a community certificate when the petitioner was residing at Thirumayam Taluk, as evident in the community certificate dated 10.2.1986 itself, and therefore, it is contented that the community certificate dated 10.2.1986 is bogus and invalid.

6. I have given careful consideration to the submissions of both sides.

7.1. Concededly, the community certificate dated 10.2.1986, relied upon by the petitioner, was issued by one S.Ayyasamy under the seal of Tahsildar-Taluk Executive Magistrate, Pudukottai and also with a blurred round seal of Tahsildar Kalalal (Excise) (Incharge). The community certificate dated 10.2.1986 also discloses that the petitioner was residing at Karugapoolampatti, Tirumayam Taluk, Pudukottai District, but the learned counsel for the petitioner could not explain under what circumstances, the petitioner being a resident of Thirumayam Taluk approached the Taluk Office, Pudukottai Taluk for issue of a community certificate, as rightly pointed out by the learned counsel for the second respondent. For this reason alone, the community certificate dated 10.2.1986 relied upon by the petitioner is liable to be rejected as bogus and invalid.

7.2. It is not in dispute that, as per the records maintained at the Collectorate, the said S.Ayyasamy was not functioning as the Tahsildar-Taluk Executive Magistrate, Pudukottai Taluk, and one K. Subramaniam was alone working as the Tahsildar-Taluk Executive Magistrate during the relevant

period, viz., on 10.2.1986. Therefore, the authority of S.Ayyasamy to use the seal of the Tahsildar-Taluk Executive Magistrate, Pudukottai is also held to be illegal.

7.3. Assuming S.Ayyasamy was working as Tahsildar Kalalal (Excise)(

Incharge), he has no authority to issue the community certificate as he was an officer deputed to the Prohibition and Excise Department to discharge the duties under the Prohibition and Excise Laws and he is incapacitated to issue a community certificate in the capacity of the Tahsildar-Taluk Executive Magistrate, viz., an officer of the Revenue Department.

7.4. If that be so, it is obvious that the petitioner has entered into the service of the second respondent/ department through fraudulent means. The petitioner having entered the service of the second respondent/department by producing a bogus certificate in a post meant for reserved candidates cannot seek equity jurisdiction as, on account of the fraud played by the petitioner, the valid right of an reserved candidate has been deprived of and therefore, the petitioner does not deserve any sympathetic consideration, vide R.VISHWANATHA PILLAI Vs. STATE OF KERALA reported in 2004 AIR SCW 419.

7.5. In the instant case, the petitioner having obtained a community certificate from a person who was not holding the office of the Tahsildar-Taluk Executive Magistrate, Pudukottai, but from a person who was working as a Tahsildar Kalalal (Excise)(Incharge) had committed fraud by entering into the service of the second respondent based on such bogus community certificate. Not stopping with that the petitioner had approached this Court based on the bogus community certificate dated 10.2.1986 seeking a writ of certiorari to quash the said proceedings of the first respondent dated 27.7.2000 committing purgery in this regard.

8.1. Even though the matter was taken up for hearing on 19.1.2004, 2 1.1.2004, 28.1.2004, 5.2.2004, 6.2.2004 and 10.2.2004 and the petitioner was given a very fair and reasonable opportunity to rectify his mistake, the petitioner, it appears, had not realised the seriousness behind it. On the other hand, an attempt was made to perpetually tinker the issue and finally the petitioner sought permission of this Court to withdraw this writ petition and had also made an endorsement to that effect.

8.2. Under such circumstances, since the first respondent, in his proceedings dated 27.7.2000, clarified that the community certificate relied upon by the petitioner was not genuine, the issue is not as to the status of the petitioner, but whether the petitioner can rely upon the community certificate which is verified to be bogus. Therefore, while rejecting the request of the petitioner to withdraw this writ petition, suffice it to permit the second respondent to proceed with the disciplinary action against the petitioner and to pass appropriate orders on the same, of course after giving a fair and reasonable opportunity to the petitioner, within a period of three months from the date of receipt of copy of this order, as requested by the learned counsel for the petitioner himself agreeing to cooperate with the enquiry.

This writ petition is disposed of accordingly. No costs.
Consequently, W.P.M.P.No.6335 of 2001 is closed.

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To:

1. The District Collector Pudukottai.

2. The Additional Commissioner Central Excise Madurai.